

**BEFORE THE NEBRASKA TAX EQUALIZATION
AND REVIEW COMMISSION**

MAE E. LESLIE, MANAGER, HIGH)	
PLAINS TRUST,)	
)	CASE NO. 08H-002
Appellant,)	
)	FINDINGS AND ORDER DISMISSING
vs.)	APPEAL FOR WANT OF JURISDICTION
)	
CHEYENNE COUNTY BOARD OF)	
EQUALIZATION,)	
)	
Appellee.)	

The above-captioned case was called for a hearing pursuant to an Order to Show Cause entered by the Tax Equalization and Review Commission ("the Commission"). The hearing was held in the Commission's Hearing Room on the sixth floor of the Nebraska State Office Building in the City of Lincoln, Lancaster County, Nebraska, on November 25, 2008, and December 30, 2008 pursuant to an Order to Show Cause and Notice of Hearing (Jurisdiction) (Unauthorized Signing of Appeal) (Standing) issued November 6, 2008, and December 2, 2008. Commissioners Wickersham, Salmon, and Hotz were present. Commissioner Wickersham presided at the hearing.

May E. Leslie was present at both phases of the hearing by telephone without legal counsel. Mr. Paul Schaub, County Attorney, for Cheyenne County, Nebraska was present by telephone at both phases as legal counsel for The Cheyenne County Board of Equalization ("the County Board").

The Commission took statutory notice, received exhibits, and heard testimony.

The Commission is required by Neb. Rev. Stat. §77-5018 (Reissue 2003) to state its final decision, with findings of fact and conclusions of law, on the record or in writing.

II. FINDINGS

The Commission finds and determines that:

1. The High Plains Trust is the owner of record of certain real property described in the appeal as Lot 46, Valley View Addition, Sidney, Cheyenne County, Nebraska (“the subject property”).
2. The appeal form was signed by Mae E. Leslie, Manager, High Plains Trust and indicated on the appeal form that it was being signed per Neb. Rev. Stat §§77-3503 and 77-3511 to 77-3515.

II. APPLICABLE LAW

1. The Commission, while making a decision, may not consider testimony, records, documents or other evidence which is not a part of the hearing record except those identified in the Commission’s rules and regulations or Neb. Rev. Stat. §77-5016(3) (Supp 2005).
2. Parties cannot confer subject matter jurisdiction on a tribunal by acquiescence or consent nor may it be created by waiver, estoppel, consent, or conduct of the parties. *Creighton St. Joseph Regional Hospital v. Nebraska Tax Equalization and Review Commission*, 260 Neb. 905, 620 N.W.2d 90 (2000).

3. The Commission has authority to promulgate rules and regulations necessary to regulate persons and proceedings within the Commission's jurisdiction and authority. Neb. Rev. Stat. 77-5021. (Reissue 2003).
4. An appeal form must be signed by a party, legal counsel for a party or a person authorized by law or the Commission's rules and regulations to sign an appeal. 442 Neb. Admin. Code, ch 5 §001.04 (10/07).
5. A person who will be directly affected by the outcome of an appeal is one who has a real interest in the appeal or has a legal or equitable right, title, or interest in the subject of the appeal may be a party in an appeal. 442 Neb. Admin. Code, ch 2 §001.37 (10/07).
6. If a party is a natural person, only that person or the "guardian" "conservator" or "next friend" (as those terms are defined in Nebraska State Law and Nebraska Supreme Court decisions) of that person may sign a petition/appeal. 442 Neb. Admin. Code, ch 5 §001.05C (10/07).
7. If a party is a corporation, limited liability company, partnership, limited partnership, or other legal entity, association, union or organization, the entity or organization may sign an appeal/petition through a director, an officer, a full-time salaried employee, member or manager of a limited liability company, or other individual authorized by law or the governing documents of the entity, association or organization. 442 Neb. Admin. Code, ch 5 §001.05D (10/07).
8. If a party is a trustee that party, as trustee, may sign an appeal/petition. 442 Neb. Admin. Code, ch 5 §001.05E (10/07).

9. Any other person who is a party including but not limited to a successor in interest, lessee, licensee, any bankruptcy trustee, receiver, personal representative or any other person appointed by a Nebraska Court or a Court of the United States, may sign an appeal/petition. 442 Neb. Admin. Code, ch 5 §001.05H (10/07).
10. Legal counsel for a party may sign an appeal/petition. 442 Neb. Admin. Code, ch 5 §001.05I (10/07).
11. An application for homestead exemption must be signed by an owner of the property to which the exemption will be applicable. Neb. Rev. Stat. §77-3511 (Reissue 2003).
12. An owner for purposes of the homestead exemption is the owner of record or surviving spouse, the vendee in possession under a land contract or surviving spouse, one of the joint tenants or tenants in common or surviving spouse, or the beneficiary of a trust of which the trustee is the record title owner and the beneficiary-occupant (1) has a specific right to occupy the premises as stated in the trust instrument, (2) has the right to amend or revoke the trust to obtain such power of occupancy or of title, or (3) has the power to withdraw the homestead premises from the trust and place the record title in such occupant's name. Owner shall also mean a resident of a dwelling complex, the record title owner of which is a not-for-profit corporation, who has by purchase for fair market value secured a life tenancy in a taxable unit of the complex. Neb. Rev. Stat. §77-3503 (Reissue 2003).
13. The deed, trust instrument, contract, or memorandum showing that the criteria of section 77-3503 must be on file on the appropriate public record as of January 1 of the year for which exemption is sought, except that if such instrument is not on file as of January 1, a

copy of such instrument shall be attached to such application before the homestead exemption shall be granted. Neb. Rev. Stat. §77-3503 (Reissue 2003).

III. ANALYSIS

The issue presented in this proceeding is whether the Commission has jurisdiction to hear the appeal of Mae E. Leslie, Manager, High Plains Trust. The subject property is held by a trustee. The identity of the trustee is unknown. There is no evidence that Mae E. Leslie has any authority to act on behalf of the Trustee to file an appeal with the Commission. According to her own testimony the authority of Mae E. Leslie as “manager” is limited to use of a checking account. It is clear that Mae E. Leslie had no authority to sign the appeal as “manager.”

Mae E. Leslie asserted on the appeal form that she was a qualified applicant for homestead exemption as a beneficiary-occupant. An application for homestead exemption must be signed by the owner of the property to which the exemption will be applicable. Neb. Rev. Stat. §77-3511 (Reissue 2003). When property is held by a trustee a beneficiary-occupant may be deemed to be an owner. Neb. Rev. Stat. §77-3503 (Reissue 2003). A beneficiary-occupant must meet one of three conditions to be deemed an owner. Neb. Rev. Stat. §77-3503 (Reissue 2003). The three conditions are having: 1) a specific right to occupy the stated premises as stated in the trust instrument; 2) the right to amend or revoke the trust to obtain such power of occupancy or of title; or 3) the power to withdraw the homestead premises from the trust and place the record title in the occupant’s name. Neb. Rev. Stat. §77-3503 (Reissue 2003). The required showing may be made through a copy of the trust instrument or a memorandum. Neb. Rev. Stat. §77-3503 (Reissue 2003). The required showing must be of public record as of

January 1 or the year for which the exemption is sought or attached to the application for exemption. Neb. Rev. Stat. §77-3503 (Reissue 2003).

A memorandum was filed by the Cheyenne County Clerk in Book 289 Misc Records at page 358 on October 21, 2008. (E2). A filing to meet the requirements of section 77-3503 of Nebraska Statutes must be made by January 1 of the year for which exemption is sought. There is no evidence that the requirements of section 77-3503 were met by the filing of an attachment to the application form or by a filing that was a public record as of January 1, 2008. Mae E. Leslie has not met the requirements of section 77-3503 of Nebraska Statutes and could not be deemed an owner of the property to which the homestead exemption was to be applicable.

The homestead exemption application was not signed by an owner as described in section 77-3503 of Nebraska Statutes, the County Board did not have jurisdiction to consider the complaint filed with it and, therefore, the Commission does not have jurisdiction to consider an appeal from its decision. See, e.g. *Lane v. Burt County Rural Public Power Dist.*, 163 Neb. 1, 77 N.W.2d 773 (1956).

Mae E. Leslie testified that a deed transferring the property for which the homestead exemption is sought was recorded in the county clerk's office and that the recorded deed reserved to her a life estate in the subject property. A copy of the deed was not offered into evidence. The testimony of Mae E. Leslie is not sufficient to establish the existence of a life estate. Mae E. Leslie testified that the memorandum received as Exhibit 2 was sufficient to establish the fact that she held a life estate in the subject property. The Commission has examined Exhibit 2 and found only one reference to a transfer of a real estate contract without any indication that any

interest was reserved by the transferor. The memorandum received as Exhibit 2 does not show that Mae E. Leslie holds a life estate in the subject property.

The Commission must order dismissal of the appeal.

**IV.
CONCLUSION OF LAW**

The Commission does not have jurisdiction over the Taxpayer's appeal.

**IV.
ORDER**

IT IS THEREFORE ORDERED THAT:

1. The appeal of Mae E. Leslie, Manager, High Plains Trust is dismissed for want of jurisdiction.
2. This decision, if no appeal is timely filed, shall be certified to the Cheyenne County Treasurer, and the Cheyenne County Assessor, pursuant to Neb. Rev. Stat. §77-5018 (Cum. Supp. 2006).
3. Each party is to bear its own costs in this matter.

4. This decision shall only be applicable to tax year 2008.

Dated January 6, 2009.

Wm. R. Wickersham, Commissioner

Nancy J. Salmon, Commissioner

Robert W. Hotz, Commissioner

SEAL

APPEALS FROM DECISIONS OF THE COMMISSION MUST SATISFY THE REQUIREMENTS OF NEB. REV. STAT. §77-5019 (CUM. SUPP. 2006), OTHER PROVISIONS OF NEBRASKA STATUTES, AND COURT RULES.